Grant

No error

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 93

DECEMBER TERM, 1868.

THE UNITED STATES EX REL. THOMAS BUTZ, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF MUSCATINE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

Reverse

FILED SEPTEMBER 12, 1868.

Return 5
Dismissed 24
Judgment 25

SUPREME COURT OF THE UNITED STATES.

No. 287.

DECEMBER TERM, 1868.

THE UNITED STATES EX REL. THOMAS BUTZ, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF MUSCATINE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the judges of the Circuit Court of the United States for the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in said Circuit Court before you, between the U. S. ex rel. of Thomas Butz, plaintiff, and the mayor and aldermen of the city of Muscatine, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; and we, be willing that the error, if any there hath been, should be duly corrected. and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 2d day of June, in the year of our Lord eighteen hundred and sixty-eight, and of the independence of the United States the ninety-second.

In testimony whereof the clerk of said court has affixed his name and the seal of said Circuit Court the date above written.

[SEAL.] W. G. WOODWARD,

Clerk of the Circuit Court of the United States, District of Iowa.

The execution of this writ appears by the transcript hereto annexed. A copy of this writ was lodged in this office for the defendant on the 2d day of June, 1868.

W. G. WOODWARD, *Clerk.*

2 UNITED STATES OF AMERICA, *ss*:

To the mayor and aldermen of the city of Muscatine, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the district of Iowa, wherein the United States in the relation of Thos. Butz is plaintiff, and the mayor and aldermen of the city of Muscatine are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sam'l F. Miller, one of the justices of the

said Supreme Court of the United States, this 16th day of June, in the year of our Lord 1868.

SAM. F. MILLER,
One of the Justices of the Supreme Court of the United States.

Endorsed: The United States on the relation of Thos. Butz *vs.* The mayor and aldermen of the city of Muscatine. Citation.

Due and legal service hereof accepted this 22d day of June, A. D. 1868, and copy received.

THOMAS HANNA,
Att'y for the Mayor and Aldermen of the City of Muscatine.

3 THE UNITED STATES EX REL. Thomas Butts
v.
THE MAYOR AND ALDERMEN OF THE city of Muscatine.

Proceedings before the Circuit Court of the United States in and for the district of Iowa, at a term thereof begun and holden at Des Moines on the second Tuesday of May, A. D. 1868.

Be it remembered that on the 16th day of October, A. D. 1867, there was filed in the Circuit Court an information for a writ of alternative mandamus, in the words and figures following, viz:

4 In the Circuit Court of the United States for the district of Iowa.

Petition for writ of mandamus.

U. S. EX REL. THOMAS BUTZ *vs.* MAYOR AND ALDERMEN CITY of Muscatine. } No. 463, in Cir. Ct.

To the judges of the Circuit Court of the United States for the district of Iowa:

Thomas Butz, who avers that he is a citizen of the State of Pennsylvania, comes and gives this court to be informed, that on the 16th day of May, A. D. 1867, he recovered by due process of law judgment in said court against the city of Muscatine, which he avers is a municipal corporation, created by and a citizen of the State of Iowa, for the sum of $57,605 16-100, with costs taxed at $36 80, and interest at 7 per cent., on which judgment has been issued and returned "no property found," as will appear by the record of said cause, now subject to the inspection of this court; that the business of said corporation is managed by a mayor and aldermen, who manage
5 its financial affairs, cause its taxes to be levied and collected, and whose duty it is to provide for the payment of all judgments

recovered against it; that said judgment was for interest on certain bonds executed by the city of Muscatine, in 1854, and it was the duty of the mayor and aldermen of said city to provide for the payment of said interest as it fell due, and it is their duty to levy and collect taxes and pay said judgments when recovered; that a demand has been made upon the mayor and aldermen to levy and collect the necessary taxes to pay said judgments, interest and costs, and they refuse so to do, and deny any authority or duty to do so; that the city of Muscatine has no property subject to execution out of which said judgments can be made; that by the laws of the State of Iowa, in force when said debt was created and said judgment was rendered, the public property of said city necessary to carry out the purpose for which it was organized, and the private property of its citizens, were exempt from levy to pay said debt and judgment, but it was made the duty of said mayor and aldermen to levy as early as practicable, after said judgment was recovered, a tax sufficient to pay said judgment, with
6 interest and costs; that the said mayor and aldermen have, after issue of execution and demand made, and after a lapse of reasonable time, refused to perform said duty; that the relator is without other adequate remedy at law, and he prays for a writ of mandamus to be issued from this court, directed to said mayor and aldermen, commanding them forthwith to levy and collect a specific tax upon the taxable property of said city of Muscatine, sufficient to pay said judgment of $57,605 16, interest at 7 per cent., and costs taxed at $; and when collected to pay and satisfy the same therewith, and that such order may be had on the premises as justice may require.

(Signed) THOMAS BUTZ.

STATE OF IOWA:

I, James Grant, declare on oath that I am the relator's attorney, that I have a personal knowledge of the facts stated in the foregoing information, and know the same to be true.

(Signed) JAMES GRANT.

Subscribed and sworn to by J. Grant before me and in my presence this 3d day of Sept., A. D. 1867.

(Signed) S. F. SMITH,
N. P., Scott Co., Iowa.

Filed Octo. 16th, 1867.

[SEAL.] (Signed) W. G. WOODWARD, *Clerk.*

7 And afterwards, on the same 16th day of October, A. D. 1867, the following order and entry of record were made, to wit:

Order for writ.

THE UNITED STATES EX REL. THOMAS BUTTS
v.
THE MAYOR AND ALDERMEN OF CITY OF MUSCATINE.

This cause now comes on for hearing. Grant for the plaintiff; and the court orders that an alternative writ of mandamus be issued in accordance with the prayer of the plaintiff, returnable at the next term of this court.

And afterwards, on the 24th day of October, 1867, a writ of alternative mandamus was issued, in the words and figures following, viz:

8 The United States of America to the mayor and aldermen of the city of Muscatine:

Whereas it has been represented to our Circuit Court of the United States for the district of Iowa that Thomas Butz is a citizen of the State of Pennsylvania, and has given this court to be informed that on the 16th day of May, 1867, he recovered, by due process of law, judgment in said court against the city of Muscatine, which he avers is a municipal corporation created by, and a citizen of, the State of Iowa, for the sum of $57,605 16, with costs taxed at $36 80, and interest at 7 per cent., on which judgment execution has been issued, and returned "No property found," as will appear by the record of said cause, now subject to the inspection of this court; that the business of said corporation is managed by a mayor and aldermen, who manage its financial affairs, cause its taxes to be levied and collected, and whose duty it is to provide for the payment of all judgments recovered against it; that said judgment was for interest on certain bonds executed by the city of Muscatine in 1854, and it was the duty of the mayor and aldermen of said city to provide for
9 the payment of said interest as it fell due, and it is their duty to levy and collect taxes, and pay said judgments when recovered; that a demand has been made on the mayor and aldermen to levy and collect the necessary taxes, to pay said judgments, interest and costs; and they refuse to do so, and deny any authority or duty to do so;

That the city of Muscatine has no property subject to execution out of which said judgment can be made;

That by the laws of the State of Iowa in force when said debt was created and said judgment was rendered, the public property of said city necessary to carry out the purpose for which it was organized and the private property of its citizens were exempt from levy to pay said debt and judgment; but it was made the duty of said mayor and aldermen to levy, as early as practicable after said judgment was

recovered, a tax sufficient to pay said judgments, with interest and costs;

That the said mayor and aldermen have, after issue of execution or demand made, and after a lapse of reasonable time, refused to perform said duty;

That the relator is without other adequate remedy at law:

Now, therefore, we, being willing to do justice in the prem-
10 ises, do command you, the said mayor and aldermen of the said city of Muscatine, to forthwith levy and cause to be collected a tax on the taxable property of said city, for the year A. D. 1867, sufficient to pay said judgment of $57,605 16, interest at 7 per cent., and costs taxed at $36 80, and when collected, to pay and satisfy the same therewith, or that you appear before our said Circuit Court, at Des Moines, at the court-house in Polk county, on the 12th day of May, A. D. 1868, to show cause why you refuse to do so.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, this 24th day of October, A. D. 1867.

[SEAL.] (Signed) W. G. WOODWARD,
Clerk.

We, George Meason, mayor, and John H. Munroe, clerk of the city of Muscatine, do hereby accept due and legal service of the original writ of mandamus, of which the within is a copy, this the
11 30th day of November, A. D. 1867, and waive service by marshal.

(Signed) GEO. MEASON,
Mayor.
JOHN H. MUNROE,
Clerk of the City of Muscatine.

Filed May 13th, 1868.
(Signed) W. G. WOODWARD, *Clerk.*

And afterward, on the 13th day of May, A. D. 1868, it then being of the May term of the said Circuit Court, 1868, the following return to the said writ of alternative mandamus was filed in said court, with exhibits A, B, C, D, E and G.

12 In the Circuit Court of the United States.

Return to writ of mandamus.

THE UNITED STATES ON RELATION OF THOMAS Butz
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF Muscatine.

1. Now come defendants, and for return and answer to the alternative mandamus heretofore issued in this cause say that the relator ought not to have his peremptory mandamus, because respondents

deny that it is their duty to provide for the payment of all judgments against the city of Muscatine; deny that it is the duty of respondents to provide for the payment of the interest on the bonds referred to in said writ of mandamus as the same falls due; deny that it is their duty to levy and collect tax to pay the judgment of the relator against the city of Muscatine, referred to in said writ; deny that it was made the duty of respondents to levy, as early as practicable after said judgment was rendered, a tax sufficient to pay said judgment, interest and costs; deny that the relator is without other adequate remedy at law; and deny that the respondents have the power or authority to levy a tax for the purposes set forth in said alternate writ.

13 2. Respondents show that the city of Muscatine is a municipal corporation created by an act of the legislature of the State of Iowa, approved February 1st, 1851; amended by the legislature of said State by an act approved January 22d, 1852; also by an act approved January 24th, 1852; also by an act approved January 24th, 1855; also an act approved January 26th, 1857; and by an act approved March 18th, 1864, copies of which are filed herewith as exhibits and made part of this return, marked A, B, C, D and E.

Respondents show that by virtue of said acts of the legislature of the State of Iowa these respondents deny all their power and authority as mayor and aldermen of said city, especially the power and authority to levy and collect tax on the property subject to taxation by the city of Muscatine; and that by the terms of said acts these respondents are not empowered or permitted to levy or collect a tax exceeding one per cent. on the property subject to taxation by said city in any one year, for any and all purposes.

Respondents further show that pursuant to the power and authority conferred on them by said acts, these respondents did, on the 9th day of November, 1867, levy a tax of one per cent. on the assessment for said year, which levy amounted to twenty-six thousand five hundred and forty-five 31-100 dollars; that due and proper means were taken to collect said tax, together with any and all tax delinquent for former. Respondents show that the revenue de-

14 rived from all other sources than taxation by said city during the current year amounts to fourteen hundred and seventeen 91-100, ($1,417 91.)

Respondents further show, that of the tax levied as aforesaid there is delinquent forty-three hundred and ninety-two dollars for the year 1867, on which little or nothing can ever be realized, because the same is nearly all uncollectable.

Respondents further show, that more than the entire amount of revenue from all sources derived by said city was expended by the proper authorities of said city for the necessary current incidental expenses of said city during the year ending March 20th, 1868, that being the end of the financial year of said city, and all of which revenue was absolutely necessary for the proper expenses of said city; that after paying all of said revenue on said expenses, there remained a deficit against said city of five thousand five hundred sixty-one

65-100 dollars for said year, all of which will more fully and at length appear by reference to the annual report of the mayor of said city for said year, a copy of which is filed herewith, marked "G," and made part of this return.

Respondents further show, that of the aforesaid levy of one per cent. more than one-half the amount realized thereon was by the proper authorities set apart and expended especially for work and materials on the streets and alleys of said city, which amount is known
15 as the road fund; that the residue of the revenues of said city was needed, appropriated, set apart, and expended for other necessary purposes of said city, as shown by said mayor's report; that the street or road tax has always been a separate, distinct, and special charge since the incorporation of said city; that the road fund has always been kept seperate from other revenues of said city; that all persons, charged with tax for roads or streets have, under the general law of the State of Iowa, as well as by the ordinances of said city, the right to pay the same in work and labor on said streets, at such times and places as the street commissioner may direct; that more or less of the road fund has always been paid in work done on the streets of said city by the persons from whom said tax was due; that after spending the total amount of revenue set apart for road purposes therefor, there remained a deficit of twenty-nine hundred and nine 8-100 dollars, for which deficit road orders are now outstanding, which will be paid by the holders on future road tax of said city.

Respondents further show, that the assessment of property subject to taxation by the city for the year 1868 is not yet completed; that on the first Monday of March, 1868, at the annual election of officers of said city, an assessor was duly elected and qualified for the current year, who without delay entered on the duties of his
16 office, and is now preparing an assessment roll, and making an assessment of the property subject to taxation by said city for the current year, so that respondents have no accurate means of informing this court what the value of the property subject to taxation will amount to, but from information and belief say that it will not exceed the assessment of 1867, and that a tax thereon will not amount to more than twenty-six thousand five hundred and forty-five dollars, ($26,545,) levied at the rate of one per cent. on the taxable property of said city; that so soon as said assessment is completed, respondent will levy a tax thereon to the full amount authorized by said act of incorporation and amendments, or by the laws of the State of Iowa, which levy will exhaust the authority of respondents to levy taxes on the property of said city for the current year for any and all purposes.

Respondents say that the entire revenue of the city of Muscatine will not exceed the revenue thereof for 1867; that the revenues of the current year will probably fall short thereof, owing to the fact that the collections for 1867 included a large amount of delinquent tax for former years.

Respondents say that they have no power or authority, nor can

they be required to set apart any portion of the tax so to be
17 levied for the payment of the judgment of the relator against the city of Muscatine, because the entire amount of such tax will be necessary, and required for the payment of the actual current expense of said city for said year, which current expense is a paramount lien on said tax.

Respondents further show, that by the laws of the State of Iowa, and ordinances of said city, it is made their duty to pay the salaries of the officers and employees of said city, to pay all expenses incurred for work and repairs on the streets and alleys of said city, all accounts incurred in administering the affairs of said city, and all other and necessary and proper expenses; that the chief and almost the only source of revenue upon which said city can depend for the support of its government and the furtherance of the objects for which it was organized and incorporated, and the payment of its debts, is derived from taxes; that the total amount of revenue, if the entire amount of the levy could be collected, (which cannot be done,) will not exceed thirty thousand dollars; that of this sum, taking the last year as a basis, seventeen thousand nine hundred dollars will be required to pay for work and materials on streets and alleys, and fifteen thousand dollars for general necessary expenses for the current year, more fully shown in the report of the mayor.

Respondents further show, that the city and road orders
18 shown in the mayor's report as an indebtedness against the city of Muscatine were issued under the power conferred in said act of the legislature and ordinances of said city, passed by authority thereof, in payment of the current expenses of said city, and in payment for work done on streets and alleys from time to time: that the amount now outstanding represent the sum the revenues of said city have fallen short of paying the current expenses for roads, alleys, and general purposes; that said orders or scrip, since the organization of said city, has been taken and receivable for all indebtedness due the city for all purposes; that if not paid when duly presented said orders draw interest, which interest forms part of the amount paid in as revenue of said city, said orders being receivable as such; that owing to the fact that the revenues of the city are insufficient to meet the current expenses thereof, the orders on scrip have, for the ten years last past, greatly depreciated below par value.

Respondents further show, that by virtue of the power conferred on the mayor and aldermen of said city, said authorities did, in the year 1852, deem it expedient to establish grades for the street and alleys of said city, by reason of which the taxable property of said city was greatly increased in value, and did then commence a system of grades in accordance therewith, which are now, and ever since have been, in the process of construction so fast as the means at the
19 disposal of the city authorities could be realized, and which are now in an unfinished state, and if not completed in accordance with the original grades, will greatly lessen the value of property along said streets and alleys, and thereby impair the revenue of said city. The [the] city of Muscatine is located on the bank of the

Mississippi river; that the surface of the ground on which the city is built is rough and uneven, with hills and deep ravines, making a large outlay necessary each year to keep up repairs of streets and alleys, owing to damage by washing during rains.

Respondents further show, that a creek, known as the west branch of Papoose creek, passes through said city, in which creek a large quantity of water flows; that in the year 1849 it became necessary, for the protection of the property in said city, to construct, and said city did soon thereafter construct, a large culvert to carry the water of said creek from the west side of Iowa avenue, along and under Third street, to the east side of Sycamore street, in said city, and discharge said water into the main creek; that the materials of which said culvert was constructed are so rotten and decayed that it is necessary to rebuild said culvert during the present year, at a cost of not less than six thousand dollars; that unless rebuilt said city will be liable to pay heavy damages to the owners of property whose premises will be overflowed and injured thereby; that the courts of the State of Iowa have held and decided that said city is liable for all
20 damages that are occasioned by the overflow of water from said stream unless a proper culvert is provided therefor.

Respondents further show, that a large creek, known as Papoose creek, passes through the city of Muscatine, crossing in its course Front, Second, Third, and other streets, at right angles; that it is necessary to maintain good and safe bridges at the point where said creek crosses said streets; that during the year 1851 the city erected a bridge on Second street of said city, where said street crosses said stream; that said street is the principal business street of said city; that without a bridge thereat said stream could not be crossed; that the materials of which said bridge was erected are now decayed and rotten, rendering said bridge unsafe; and that it is necessary for said city to rebuild said bridge during the present year; and that said bridge will cost at least six thousand dollars; and that other bridges, necessary to be repaired and rebuilt, will cost the city at least two thousand dollars during the current year, which sums are exclusive of the amounts shown hereinbefore necessary for streets, alleys, and general expenses.

Respondents further show, that by the laws of Iowa in force since the adoption of the code of Iowa, in the year 1851, it is provided that "public buildings owned by the State, or any county, city, school district, or other civil corporation, and any other property which
21 is necessary and proper for carrying out the general purposes for which said corporation was organized, are exempt from execution;" that the entire amount of revenue authorized by the laws of Iowa to be raised by said city from all sources is necessary and proper for carrying out the general purposes for which the city of Muscatine was incorporated and organized.

Respondents further show that by section 3,276 of the revision of Iowa, it is provided that in case officers of any corporation having the authority to do so neglect to levy a tax to pay the indebtedness of such corporation on demand, such officers shall be personally re-

sponsible for the debt, to pay which it was their duty to levy such tax; and that relator has not sued these respondents, nor shown any reason why he has failed to pursue such legal remedy.

Respondents further show that in a certain suit in equity, pending in this court, wherein Mark Howard and others are complainants, who sue at the instance of and for the use and benefit of the relator, as well as complainants named, in which suit the city of Muscatine with other parties are defendants, it was held, ordered and decreed, among other things, that the proceeds sixteen per cent. of the capital stock of the Mississippi and Missouri Railroad Company was liable to and should be applied on the debt of the relator, with others; that
22 the money arising from said sixteen per cent. of said stock is within the jurisdiction of this county, and that the amount thereof which the relator will receive in virtue of such decree is more than sufficient to pay the judgment of the relator against said city, referred to in the alternative writ in this cause; and further say not.

(Signed) THOMAS HANNA,
Attorney for City Muscatine.

Filed May 13th, 1868.
(Signed) W. G. WOODWARD, *Clerk.*

23 The undersigned mayor and aldermen of the city of Muscatine, State of Iowa, being duly sworn, say that we know the contents of the foregoing return to the writ of mandamus therein mentioned, and that the matters and things stated in such return are true, in substance and fact.

(Signed) E. KLEIN, *Mayor.*
CHAS. EDW'D KENT,
V. CHAMBERS,
L. H. WASHBURN,
JOHN COCKLER,
C. KEGEL,
WM. SPRING, *Aldermen.*

STATE OF IOWA, *County and City of Muscatine:*

I, John H. Monroe, a notary public of said county, residing in said city, say, that the above-named mayor and aldermen of said city subscribed their respective names to the above return, and were duly sworn thereto by me this 2d day of May, A. D. 1868.

Witness my hand and notarial seal.

[SEAL.] (Signed) JNO. H. MONROE,
Notary Public.

Filed May 13th, 1868.
(Signed) W. G. WOODWARD, *Clerk.*

24 *Exhibit "A."*

AN ACT to incorporate the city of Muscatine.

Section 1. Be it enacted by the general assembly of the State of Iowa, That the town of Muscatine, (formerly the town of Bloomington,) in the county of Muscatine, is hereby created a city by the name of the "City of Muscatine."

Section 2. The said city is made a body corporate, and is invested with all the powers and attributes of a municipal corporation.

Section 3. All the rights, powers, privileges, duties, liabilities and property of the late town of Muscatine are hereby transferred to and imposed upon the said city, except as repealed or qualified herein, and the same may be inforced by or against the said city, as they might have been by or against the town.

Section 4. The city is hereby divided into three wards, as follows: that part of the city which lies south and west of the middle of Chestnut street is the first ward; that part lying between the middle of Chestnut street and middle of Walnut street is the second ward; that part lying north and east of the middle of Walnut street is the third ward; but the city council may create new wards and change the limits of those now or hereafter established.

Section 5. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the
25 city six months, and of the ward in which he offers to vote ten days next preceeding a city election, is declared a citizen of the said city, and is entitled to vote at all elections thereof.

Section 6. A person offering to vote may be challenged, as in the elections in the townships, and an oath may be administered to him under like circumstances, naming the qualifications herein prescribed.

Section 7. No person shall be eligible to any elective office mentioned in this act unless he be a citizen of the city as above defined, and has been a resident thereof one year next preceeding his election.

Section 8. The officers of the city shall be a mayor, two aldermen from each ward, a marshal, recorder, treasurer, assessor and wharfmaster, for the choice of whom an election shall be holden annually on the first Monday of March, and each of whom will hold his office for the term of one year, (except in the case of aldermen as hereinafter provided,) and until their successors are elected and qualified.

Section 9. Two aldermen shall be elected in each ward, and such one of the two as receives at the first election the highest number of votes shall hold his office for the term of two years, and the other one year, and thereafter one shall be elected each year in each ward, to hold for the term of two years. If there be a tie in the
26 above case, the matter is to be determined by lot.

Section 10. It is the duty of the mayor to see that the laws and ordinances of the city are executed, and their violations punished; to superintend and direct the official conduct of the subordinate officers, to keep the seal of the city, and to sign and seal all

commissions, licenses and permits granted by the city council, and to perform such duties and exercise such powers as pertain to the office of mayor of a city, and such as may be granted by the ordinances of the city consistent with law.

Section 11. He is, by virtue of his office, a justice of the peace, and is invested with exclusive original jurisdiction of cases arising under the ordinances of the city, with criminal jurisdiction of the offences against the laws of the State, committed within the city and with civil jurisdiction limited to the city, in the same manner as that of justices is or [or] may be limited to their townships, and he will not be disqualified to act in such judicial capacity by any proceeding being in the name of or in behalf of the city. He will be entitled to demand and receive in civil actions, and in actions for the breach of the laws of the State, such fees as are at the time allowed by the law to a justice of the peace.

Section 12. Appeals to the District Court in the same county shall be allowed from the judgment and decisions of the mayor in
27 the same cases time and manner as they are at the time allowed by law from those of other justices, and they shall be tried in the same manner.

Section 13. He shall be the presiding officer of the city council, when present, and shall give the casting vote when there is a tie. In his absence the council may appoint a president for the time being.

Section 14. The recorder is required to keep a true record of all the official proceedings of the council, and such record shall at all times be open to the inspection of any citizens; and he shall perform such other duties as may be required by the council.

Section 15. The marshal is made a conservator of the peace; he is the executive officer of the mayor's court, and shall execute and return all process directed to him by the mayor, and in cases for the violation of the criminal laws of the State, and of the ordinances of the city, may execute such process in any part of the county; he is invested with the same authority within the city to quell riot and disturbances, to prevent crimes and to arrest offenders, that the sheriff has within his county. He shall perform such other duties as the council prescribe, and with its approval may appoint one or more deputies, for whose official acts he will be responsible, and
28 whom he may discharge. For the services of legal process he will be entitled to the same fees as a constable, and for services as may be required by the council, such compensation as it may allow.

Section 16. The legislative authority of the city is vested in a city counsel, consisting of a mayor, and a board of aldermen, composed of two from each ward of the city.

Section 17. The council may hold meetings as it sees fit, having stated times fixed, or having provided by ordinances for the manner of calling them. Its meetings shall be public.

Section 18. A majority of the council will be necessary to constitute a quorum. It is the judge of the election and qualification of its

own members; it may determine the rules of its own proceedings; it may compel the attendance of its members at its meetings, in such manner and by such penalties as it may adopt, and it shall cause a record of its proceedings to be kept.

Section 19. The council is invested with the following powers:

1st. To make ordinances to secure the inhabitants against fire, against violations of the public peace and of the law; to suppress riots, drunkenness, gambling and indecent and disorderly conduct, and generally to provide for the safety, good order and prosperity of the city, and the health, morals and conveniences of the inhabitants.

29 2d. To impose penalties for the violation of its ordinances, not exceeding one hundred dollars, which may be recovered by civil action in the name of the city, or by complaint before the mayor, as in the case of a complaint before a justice of the peace, and the laws of the State in relation to the carrying into effect a judgment of a justice of the peace under a complaint; shall be applied to judgments in the above cases, but the charges thereof must be borne by the city.

3d. To establish and organize fire companies, and provide them with engines and other fire apparatus.

4th. To regulate the keeping and the sale of gunpowder within the city, and to provide that no building of wood shall be erected within such parts of the city as may be designated, and to declare such buildings a nuisance and cause their removal.

5th. To have control of the landing on the Mississippi river, and build wharves and regulate the landing, wharfage, and dockage of boats and all water-crafts, goods, lumber and other things landed at or taken (away) from the same; provided nothing in this section shall be (so) construed as to effect the rights of the State or counties, nor to prevent the county of Muscatine from granting ferry charters in said county.

6th. To exercise exclusively the power to provide for the
30 license, regulation or prohibition of exhibitions, shows and theatrical performances, billiard tables, ball and ten-pin alleys, and places where any games of skill or chance are played; but this power extends to no exhibition of a properly literary, scientific or artistical character, and when the laws of the State permit license for the sale of intoxicating liquors, that the subject shall be within the exclusive authority of the council, and it may at all times prohibit the retail of the above liquors, unless such prohibition would be inconsistent with the law of the State at the time existing; and it may revoke or suspend any of the licenses above mentioned, when it considers that the good order and welfare of the city require it.

7th. To make all requisite ordinances in relation to the cleanliness and health of the city, and to require the owners of lots on which water becomes stagnant, to drain or fill up the same, and in default thereof, after a reasonable notice, to cause the same to be done at expense of the city and assess the cost on the specific lots, and cause them to be sold by the city collector, as in the case of unpaid taxes but the owner may redeem the same, as in that case.

8th. To regulate cartage and drayage within the city, and may license therefor, and may also make a prohibition of animals
31 running at large within the city.

9th. To provide for the establishment and support of schools in the city when there has been a legal vote of the citizens in favor thereof, and to provide for the government of the same.

10th. To audit all claims against the city; to provide for the keeping of the public money of the city, and the manner of drawing the same from the treasury. And all officers of the city are accountable to the council in such manner as it directs. And it is the duty of the council to publish annually a particular statement of the receipts and expenditures of the city, and of all debts owing to or from the same.

11th. To establish the grades of the streets, alleys, and wharves, and to change that of wharves at pleasure, and that of a street or alley upon the petition of two-thirds the value of the real property on both sides the street where the change is desired.

12th. To prescribe the manner of calling the meetings of the citizens, except for the election of officers.

13th. To appoint, in such manner as it determines, and during pleasure, one or more street commissioners, a clerk of the market, city surveyor, health officers, and such others as it deems advisable, and may prescribe their duties, powers, and qualifications, and may provide for the election of any of those officers by the citizens.

14th. To cause the streets and alleys of the city to be paved, and the pavements to be repaired, and to that end it may require
32 the owners of the lots adjacent, to which it is to be done, to pave or repair one-half in width of the street contiguous to their respective lots, and in case of neglect after a reasonable time named in the order, the same may be done by the city, and the expense may be assessed on such lots, which shall the effect of a tax levied thereon, and they may be sold therefor as for a tax subject to the same right of redemption.

15th. To borrow money for any object in its discretion, if, at a regularly notified meeting, under a notice stating distinctly the nature and object of the loan, and the amount thereof, as nearly as practicable, the citizens determine in favor of the loan by a majority of two-thirds of the votes given at the election.

16th. To fill vacancies occurring in any of the city officers by appointment of record, to hold in the case of elective officers, until the next regular election, and the qualification of the successor.

Section 20. Ordinances, passed by the city council, shall be signed by the mayor, and attested by the recorder, and before they take effect, be published in one or more newspapers printed in the city, at least ten days, or be posted in each ward for fifteen days; and they shall be recorded in a book to kept for that purpose, and signed by the mayor, and attested by the recorder.

33 Section 21. The elections of the officers shall be conducted in a manner as similar to that in which the elections are conducted in the townships as the nature of the case permits.

Section 22. A person offering to vote may be challenged as in the

townships, and an oath may be administered to him under like circumstances, naming the qualifications herein prescribed.

Section 23. No person shall be eligible to any elective office mentioned in this act, unless he be a voter of the city, and have been a resident thereof one year next preceding his election.

Section 24. No member of the city council shall be eligible to any office in the gift of the council, during the term for which he is elected, nor shall he be interested, directly or indirectly, in the profits of any contract, or job of work, or service, to be performed for the city.

Section 25. For all elections for city officers the is directed to issue a proclamation to the voters of the city, or of the several wards, as the case may be, naming the time and place or places of the election, and the officers to be chosen, and cause a copy to be posted up in each ward, at least ten days before the election, or instead thereof, he may cause a copy to be published in a newspaper printed in the city, the same length of time.

Section 26. The polls shall be opened between the hours of eight and ten o'clock in the forenoon, and continue open until four
34 o'clock in the afternoon; within two days after the election the judges of the election shall make their returns to the city council, who shall examine them, and cause an abstract of the votes to be recorded in a book to be kept for that purpose.

Section 27. The mayor, aldermen, marshal, treasurer, recorder and assessor shall take an oath to support the Constitution of the United States and of the State of Iowa, and faithfully and impartially to perform their duty to the best of their knowledge and ability. The oath of office may be administered by the mayor and recorder when he is qualified. And, in the transaction of the business of the corporation, those officers and the president for the time being may administer oaths, which shall be of the same effect as if administered by other officers authorized thereto.

Section 28. Such of the officers as the council determines shall give bond in such penal sum, and with such condition, as may be prescribed, and to be approved as required.

Section 29. The duties of all the officers (in addition to the duties herein prescribed) shall be such as are prescribed by ordinances, and they will be entitled to such compensation for their services, and subject to such penalties and forfeitures for violation of duty, (except as herein provided,) as the ordinances may prescribe.

35 Section 30. The city council is further authorized to levy and collect taxes, not exceeding one-half of one per cent. on the value of all property within the city, which is liable for State and county taxes, including improvements or real property. The council may also levy a tax on dogs, or may prohibit their being kept in the city.

Section 31. The latest county assessment roll shall form the basis of the assessment, but the city assessor may add thereto any property omitted, assessing the same himself.

Section 32. The marshal (or such person as, in case of his absence

or liability, the council may appoint of record,) shall be the collector of taxes, and before proceeding to collect the same, shall give thirty days' notice of the assessment and levy of the tax, and the rate thereof, in general terms, without names or the description of property in a newspaper printed in the city, if there be one, and if none, then by two written notices posted in public places in each ward.

Section 33. During the thirty days any person aggrieved by his assessment or taxation may appear before the council, which may correct the same, if found erroneous.

Section 34. The mayor shall fix his warrant to the tax list, in general terms requiring the collector to collect the taxes therein
36 according to law, and such warrant and list shall be a justification to the collector.

Section 35. When any person's tax is not paid within a reasonable time after demand, the collector may distrain upon personal property liable to taxation, and sell the same, as the county collector may sell in like cases.

Section 36. Taxes upon real property shall be a lien thereon, and it may be sold therefor, (if no personal property be found,) when the taxes remain unpaid for four months after the publication of the notice of the tax; but demand of the tax must be made a reasonable time before sale, if the supposed (owner) be found in the city.

Section 37. Such sales must be at public auction, and there must be thirty days' notice prior thereto, given as above provided for, notifying the assessment and tax, and in such sale he who bids to pay the amount due for the least quantity of the land will be the highest bidder; and the manner of ascertaining the portion purchased shall be, as directed, in the State revenue law, now or hereafter existing.

Section 38. The collector shall execute and deliver to the purchaser a deed running in the name of the State, which shall have the same force and effect as the deed of the treasurer of the county
37 on sales for county and State taxes under the law existing at the time. The land may be redeemed within one year from the day of the sale by the payment of the purchase money and ten per cent. thereon, with any other taxes paid by the purchaser, which payment may be made to the purchaser, his agent, or the treasurer of the city.

Section 39. On the passage of this act, the president and trustees of the town of Muscatine are required to cause a vote to be taken on the acceptance of this charter, in the manner in which the elections of the town are now called and holden, in which the vote shall be "for the charter," or "against the charter," and shall be taken by ballot, and if the vote be in favor of its acceptance, such result shall be declared and be entered on the record of the present town, and thenceforth the same is accepted.

Section 40. The existing authorities of the town of Muscatine will continue until an election is holden for the choice of city officers, and the organization of the city; and the town authorities shall cause an election to be holden on the first Monday of March, 1851, for the election of city officers; but if this act does not take effect at a day

sufficiently early for the above proceedings to take place as
38 early as the day above mentioned, then the question above provided for may be taken after the said first Monday of March, but the officers then chosen will hold as if elected on the above-named day, and the succeeding annual elections shall be holden as in this act before provided.

Section 41. This act may be taken and pleaded as a public act.

Section 42. An act entitled "An act to incorporate the town of Bloomington," approved January 23, 1839; an act entitled " An act to amend an act entitled an act for the incorporation of the town of Bloomington," approved Feb. 18th, 1842, and an act entitled "An act to amend an act entitled (an act) to incorporate the town of Bloomington, approved January 2d, 1836," approved January 14th, 1846; and an act entitled " An act to amend an act entitled an act for the incorporation of the town of Bloomington, approved January 23, 1839," approved January 12th, 1849, are hereby repealed; but the rights and privileges, duties, liabilities, and obligations of individuals, created or arising under the acts so repealed are not to be effected by this repeal.

Section 43. This act shall take effect from and after the passage thereof.

Approved February 1st, 1851.

Filed May 13th, 1868.

(Signed) G. W. WOODWARD, *Clerk.*

39 *Exhibit B.—Amendment.*

AN ACT to amend the charter of the city of Muscatine, approved Feb. 1, 1851.

Section 1. Be it enacted by the general assembly of the State of Iowa, That in case of the absence of the mayor of the city of Muscatine from the city, and in case of his inability to act as a justice, any justice of the peace in the township of Bloomington may take cognizance of cases arising under the ordinances of the city, such absence or inability being made to appear upon the docket of the justice. And in like cases of the absence or inability of the mayor, the president of the council pro tempore shall have authority to sign ordinances and orders on the treasurer, and to administer oaths, and to do all other things pertaining to the office of the mayor, (except acting as a justice of the peace,) stating, in connection with his signature, the absence or inability of the mayor.

Section 2. The council of the said city shall have authority to appoint the marshal and recorder of the city, which officers shall hold their respective offices during the pleasure of the council, and from whom, or any of them, the council may by general ordinance require bond.

Section 3. The said council shall appoint an assessor for the
40 city, who shall be sworn to perform the duties of office faithfully and impartially, and whose duty it shall be to make an assessment of the property in the city subject to taxation, and upon

whose assessment the council may levy a tax of not exceeding one per cent. upon the value in any one year.

Section 4. An affidavit made by the recorder, marshal, or mayor, or by the printer or publisher of a newspaper in which an ordinance may be published, stating the time and manner of the publication of an ordinance, and sworn to before the mayor or any justice of the peace in the county of Muscatine, and filed in the recorder's office, or made and signed on the face of the record of ordinances, shall be prima facie evidence of the publication therein stated.

Section 5. The said city of Muscatine shall hereafter form one road district; and the road tax assessed by the county authorities upon the persons and property in the said city may be collected by the street commissioner, or such other officer as is, or may be, created or appointed by the council to conduct the improvements upon the streets of the city; and such officer is empowered to collect such tax as fully and in the same manner as the road tax is collected in the county generally; and the said tax shall be expended by the proper officer, under the supervision and direction of the council, upon the streets and alleys of the city.

41 Section 6. All parts of the act and charter of which this is an amendment, and of any other acts conflicting with this act, are hereby repealed.

Article 7. This act shall be taken, and may be pleaded, as a public act.

Section 8. This act shall be submitted to the voters of the city of Muscatine for acceptance or rejection on the first Monday of March next, in which election the vote shall be taken by ballot, and by the word "Amendments" or "No amendments" written upon the ballots. If accepted, the result of the election shall be entered in the records of the city, and this act shall take effect from the said first Monday of March, and the votes cast for recorder and marshal shall be held for naught, and the council shall thereafter appoint those officers.

Section 9. This act to take effect from and after its publication in the "Democratic Enquirer" and the "Muscatine Journal," provided the State shall not incur any expense for publication.

Approved January 22d, 1852.

Filed May 13th, 1868.
(Signed) W. G. WOODWARD, *Clerk.*

42 *Exhibit C.*

AN ACT amendatory to the act incorporation the city of Muscatine.

Section 1. Be it enacted by the general assembly of the State of Iowa, That the city council of the city of Muscatine shall have power, whenever they deem it expedient for the public interests of the city, to alter the width, course, or grade of any of the streets or alleys of said city.

Section 2. That if any property holder in said city shall be injured

by any such alteration, such person may make application to the board of commissioners for the assessment of damages, (to be appointed as hereinafter provided,) who upon such application shall give ten days' notice in the newspapers published in said city, in case the claimant be a resident of said city, or twenty days' in case the claimant be a non-resident, stating the time and place of meeting and object of the same; and at the time specified in said notice said commissioners shall proceed to view and assess the damages done by reason of such alteration, taking into consideration the advantages and disadvantages of such alteration and improvement, and shall within five days thereafter make an award, and return the same to the county judge of Muscatine county, who shall enter judgment thereon, (if approved,) and said judgment shall be final.

43 Section 3. That the said city council or person interested may, whenever they deem it necessary, make application to the county judge of said county, who shall appoint three disinterested property holders, residents in said city, who are hereby constituted a board of commissioners for the assessment of damages, which board, or any member thereof, may for good cause shown be removed, and the vacancy occasioned thereby filled by said county judge.

Section 4. That in any case where, by reason of such alteration, any claim for damage may arise, and the thereof shall neglect to apply to said commissioners, the city council may make such application, and the proceedings thereon shall in all respects be the same as specified in the second section of this act.

Section 5. This act shall take effect and be in force from and after its publication in the "Muscatine Journal" and "Democratic Enquirer," the expense of which shall be paid by said city.

Approved January 24th, 1855.

Filed May 13th, 1868.

(Signed) W. G. WOODWARD, *Clerk.*

44 *Exhibit D.*

AN ACT to amend the act to incorporate the city of Muscatine.

Section 1. Be it enacted by the general assembly of the State of Iowa, That from and after the passage of this act the following shall be the boundaries of the city of Muscatine: Commencing at a point in the centre of the main channel of the Mississippi river, where the south line of section ten, township seventy-six, north of range two west of 5th p. m. should strike; thence west and along said section line to the west line of said section ten; thence north and along the section lines of section ten, three, thirty-four and twenty-seven, to the northwest corner of the southwest quarter of section twenty-seven, township seventy-seven, north of range two west of 5th p. m.; thence east through the centres of sections twenty-seven, twenty-six and twenty-five, to a point where said line strikes the township line, between ranges one and two west; thence south and along said township line to a point in the centre of the main channel of the Mississippi river; thence along the centre of said channel, and with the course of the same to the point of beginning.

Section 2. That said city of Muscatine, as above bounded,
45 may hereafter form two road districts, the boundaries of which shall be determined by the city council, and until so determined it shall constitute one road district; and the road taxes assessed by the county authorities upon the persons and property in said city shall hereafter only be payable to such persons as the city council may authorize to receive the same, and the city collector is hereby prohibited from paying said road taxes to any other person or officer than such as shall be authorized to receive and receipt for the same by the city council.

Section 3. That it shall be competent for the council of said city to take any steps which they may deem necessary to secure the extension of the present streets and alleys of the old city limits through the grounds which by this act are added thereto; provided, that in no case shall such extension be made and dedicated to the use of the public without the city being liable for full compensation to the owners of all such property as may be thus taken and dedicated.

Section 4. That it shall and may be lawful for the city council of said city to make any changes in the shape and width of any streets or alleys of said city, either in the old or new limits; to shut up old, and make new streets and alleys: provided, that in all and every such case the said city shall be liable to make full compensation at the fair cash value to the owners of all property which shall
46 thus be taken for public use, and for all damages which the owners may sustain by any change which said city council may at any time see proper to make.

Section 5. That all lands lying within the territory hereby brought into the city and not laid out into lots or out-lots, shall not be assessed or taxed otherwise than by the acre according to its value for agricultural, horticultural, mining or other purposes, but improvements thereon may be taxed their full value.

Section 6. The city council shall have full power to establish grades for contemplated streets and alleys in the new limits and may make such grades conform to the grades of the old limits of said city or not, as they may deem advisable, and said city shall not be liable for any damage done to buildings by grading in the new limits, unless said buildings shall have been erected before the establishment of the grades in this section contemplated.

Section 7. This act shall take effect from and after its acceptance by the city council of Muscatine, and its publication in the "Muscatine Journal" and "Iowa Democratic Enquirer," the expense of said publication to be paid by the city of Muscatine.

Approved July 14th, 1856.

I certify that the foregoing act was published in the "Iowa Democratic Enquirer" and in the "Muscatine Journal," July 26th, A. D. 1856.

(Signed) GEO. W. McCLEARY,
Sec'y of State.

Filed May 13th, 1868.

(Signed) W. G. WOODWARD, *Clerk.*

47 *Exhibit E.*

AN ACT amendatory to the act incorporating the city of Muscatine.

Section 1. Be it enacted by the general assembly of the State of Iowa, that all taxes hereafter levied and collected in the city of Muscatine, for the purpose of improving the streets and alleys thereof, shall be expended in the different wards in proportion to the amount of tax levied and collected in said ward respectively.

Section 2. For the purpose of putting the above provision into execution, it shall be the duty of the city assessor to return to the city council, at the same time that he returns his assessment of property in said city, the total amount of taxable property in each ward, separately, which shall form the basis for making the apportionment of moneys to be expended in the respective wards.

Section 3. After paying all the current expenses and debts of said city, due for the fiscal year, the excess of taxes collected in said city to be expended by the city authorities upon the streets and alleys, shall be divided and applied pro rata in the different wards thereof.

Section 4. All acts and parts of acts conflicting herewith, are hereby repealed.

Section 5. This act to take effect and be in force from and after its publication in the "Muscatine Journal" and "Democratic Enquirer," without expense to the State.

Approved January 26th, 1857.

Filed May 13th, 1868.
(Signed) W. G. WOODWARD, *Clerk*.

48 *Exhibit G.—Annual report of the mayor of the city of Muscatine, Iowa, for the year commencing March* 20, 1867, *and ending March* 20*th*, 1868.

The assets of said city for said year consist of—

Delinquent tax for	1863	$1,352 05
" " "	1864	1,552 62
" " "	1865	2,026 25
" " "	1866	6,469 75
Levy on assessment,	1867	26,545 31
Collected for licenses,	1867	1,417 71
		$39,363 84

The expenses of said city during the current year have been as follows:

T. B. James, making arrests in 1866	$46 00
B. F. Mull, services as deputy marshal	8 00
Clerk and judges of election	30 00
Wm. Leffiingwell	8 00
Jno. W. Jayne, transcript	9 15

Henry Fay, work on road in 1866		$75 00
Halstead and Stute, printing		35 12
A. J. Fi ple, rock		106 87
Inspectors of "board of health"		169 00
	J. Cunningham, loss of time on street	15 00
49	J. G. Deshler, tax refunded	92 00
	J. Butler, work on Linn st.	27 00
Front street, west bridge		2,475 50
Cemetery Association		300 00
Thos. Ryan, dirt on levee		84 57
J. S. Horton, work on road		32 00
Geo. D. Magood, work on road		67 50
B. Middleton, salary as alderman, 1864		10 00
Special police, July 4th, 1867		12 00
A. B. Curbort, poll tax refunded		2 00
F. Huttig, curbstone		12 00
J. C. Perdine, filling in alley B, 29		9 95
B. Hershey, on road in south Muscatine		749 23
R. M. Burnett, stationery, 1866		30 70
M. H. Bitzer, curbstone		13 05
G. H. Aring, poll tax refunded		2 00
Thomas D. Moore, tax refunded		3 00
Tax on bank stock, refunded		393 00
James Weed, work on road		400 00
H. W. Starr, tax refunded		13 00
Rent for mayor's office		240 00
Gas Light and Coke Co.		1,942 00
J. Kleinfelder & Co., lamp posts		826 75
Wm. G. Parvin, street lamps		75 00
Thomas Hanna, esq., legal services		170 00
Arnold & Coleman, rock		154 00
W. W. Webster, poll tax refunded		2 00
Hare & Gilbert, rock		188 50
	James Tracy, rock	6 00
50	Page & Arnold, rock	37 70
	Sheriff Kuth, keeping prisoners	27 78
John Mackey, frames for lamps		99 19
J. S. Patton, laying sidewalk		12 00
J. L. Daniels & Co., nails		7 25
L. B. Power, sec'y "board of health,"		15 00
A. B. Woods, work on road		41 25
H. H. Hine & Wm. Dill, serving subpœnas		14 40
Suel Foster, work on road		16 00
Jos. Cootee, " "		5 00
Jack Painter, " "		15 00
J. B. Dougherty & Son, glass, &c.		167 61
Charles Stone, hardware		187 72
A. Kennedy, services as engineer		21 67
A. F. Adams, repairing, &c.		33 05
H. Hunter, laying sidewalk		61 37

E. Arnold, wood	$34 37
Delegates to Oskaloosa	225 00
G. A. Garrettson, over paid tax	1 00
Special city police	438 00
Commission paid recorder	178 55
" " collector	1,234 00
" " treasurer	308 66
For lumber	1,508 05
" making tax book, 1867	65 00
Amount paid street commissioner	75 00
Journal office, printing	245 31
Courier " do.	89 12
B. F. Neidig, printing	148 75
51 Demorest & Co., stationery	65 13
Beach & McQuester, lamps	92 93
J. A. Matthewson, engineer	238 00
Tax on dogs refunded	29 75
Pat. Haley, filling on Chestnut st	55 10
John Zeigler, city assessor	266 00
Interest on funded warrants	533 15
Mayor's salary	200 00
Aldermen's "	300 00
Marshal's "	600 00
Lamp lighters "	372 00
D'p'ty marshal "	396 00
Recorder's "	250 00
Incidental expenses	111 40
Total amount city orders	$17,960 36
" " road do.	15,181 73

The amount of revenue collected as tax during the current year, including delinquencies, was as follows:

Road and city tax collected during the year	$27,581 44
Sidewalk " " " "	45 12
Amount " " on lamp posts	10 00
Interest and costs on delinquent taxes	783 59
	$28,419 15
Amount collected for licenses, &c.	1,417 71
	$29,836 86
Total amount road orders issued for general work	$15,181 73
" " city " " (as above)	17,960 36
Total	$33,142 09

52 There is delinquent tax on current and former years, as follows:

For the year 1863	$866 05
" " 1864	888 00
" " 1865	1,085 72
" " 1866	1,721 58
" " 1867	4,392 00
Total	$8,973 35

The indebtedness of said city is as follows:

Bonds issued for R. R. stock	$130,000 00
Coupons for interest	156,000 00
Funded warrants	12 953 92
City orders	17,371 04
Road orders	8,799 51
	$334,097 82

Respectfully submitted,

(Signed) GEO. WEASON, *Mayor.*

March 28th, 1868.

I certify that the above or foregoing is a true copy of the mayor's report for the year 1867, '8.

[SEAL.] (Signed) JOHN H. MUNROE, *Recorder.*

Filed May 13th, 1868.

(Signed) W. G. WOODWARD, *Clerk.*

53 Circuit Court of the United States for the district of Iowa.

Demurrer to return to alternative writ.

THE UNITED STATES ON THE RELATION of Thomas Butz
vs.
THE MAYOR AND ALDERMEN OF THE city of Muscatine.

To this return the plaintiff filed the following demurrer:

Now comes the plaintiff, by Grant, his attorney, and says he ought not to be barred from maintaining his writ by reason of anything in said return alleged, because said return is not sufficient in law to prevent the plaintiff from having said writ.

And for causes of demurrer, the plaintiff says:

1st. All that part of the return beginning with the words "because respondents deny, &c." down to the end of the words "a tax for the purposes set forth in said alternative writ," is a denial of conclusions of law resulting from the statement of facts in the alternative writ, which cannot be traversed.

2. The plaintiff demurs to that part of return under section (2) beginning with the words "respondents further shew that the
54 city of Muscatine, &c." down to the end of the words "respondents are not permitted to levy a tax exceeding one per cent. a year on the property subject to taxation by said city in any one year, for any and all purposes."

Because the execution laws of Iowa which exempt public and private property from execution on judgments after no property, confers upon city officials power to levy taxes sufficient to pay such judgments, be fully independent of the city charter.

3. To all the residue of the said return the plaintiff demurs, because the necessary expenses of the city have no preference over judgment creditors, but the law is just the reverse, the creditor is entitled to all the revenue of the city in payment of his judgment, less the expenses of collection, and the city officials have no right by the creation of new debts, to deprive the judgment creditor of the benefit of his judgment and execution.

Wherefore the plaintiffs prays judgment, that a peremptory writ issue for costs, &c.

GRANT, *For P'f.*

Filed May 16, 1868.

W. G. WOODWARD, *Clerk.*

55 And afterwards, on the 30th day of May, 1868, it being still of the said May term of the said Circuit Court, the following final judgment and entry of record were made, that is to say:

THE UNITED STATES EX REL., THOMAS Butts
vs.
THE MAYOR AND ALDERMEN OF THE city of Muscatine.

And now comes, as well the relator by Grant and Smith, his attorneys, as the respondents, by Thomas Hanna, their attorney. And this cause coming on for hearing on the demurrer of the relator to the return made by the respondents to the alternative writ heretofore issued in this cause, the same was argued by counsel, on consideration whereof the court find that the several matters and things set forth in said retern are sufficient in law to bar the right of the relator to the writ of peremptory mandamus as prayed for.

56 It is therefore considered that the said demurrer be overruled. And the plaintiff electing to abide by his demurrer, the (alternative) writ is dismissed.

52 There is delinquent tax on current and former years, as follows:

For the year 1863	$866 05
" " 1864	888 00
" " 1865	1,085 72
" " 1866	1,721 58
" " 1867	4,392 00
Total	$8,973 35

The indebtedness of said city is as follows:

Bonds issued for R. R. stock	$130,000 00
Coupons for interest	156,000 00
Funded warrants	12 953 92
City orders	17,371 04
Road orders	8,799 51
	$334,097 82

Respectfully submitted,

(Signed) GEO. WEASON, *Mayor.*

March 28th, 1868.

I certify that the above or foregoing is a true copy of the mayor's report for the year 1867, '8.

[SEAL.] (Signed) JOHN H. MUNROE, *Recorder.*

Filed May 13th, 1868.

(Signed) W. G. WOODWARD, *Clerk.*

53 Circuit Court of the United States for the district of Iowa.

Demurrer to return to alternative writ.

THE UNITED STATES ON THE RELATION of Thomas Butz
vs.
THE MAYOR AND ALDERMEN OF THE city of Muscatine.

To this return the plaintiff filed the following demurrer:

Now comes the plaintiff, by Grant, his attorney, and says he ought not to be barred from maintaining his writ by reason of anything in said return alleged, because said return is not sufficient in law to prevent the plaintiff from having said writ.

And for causes of demurrer, the plaintiff says:

1st. All that part of the return beginning with the words "because respondents deny, &c." down to the end of the words "a tax for the purposes set forth in said alternative writ," is a denial of conclusions of law resulting from the statement of facts in the alternative writ, which cannot be traversed.

2. The plaintiff demurs to that part of return under section (2) beginning with the words "respondents further shew that the
54 city of Muscatine, &c." down to the end of the words "respondents are not permitted to levy a tax exceeding one per cent. a year on the property subject to taxation by said city in any one year, for any and all purposes."

Because the execution laws of Iowa which exempt public and private property from execution on judgments after no property, confers upon city officials power to levy taxes sufficient to pay such judgments, be fully independent of the city charter.

3. To all the residue of the said return the plaintiff demurs, because the necessary expenses of the city have no preference over judgment creditors, but the law is just the reverse, the creditor is entitled to all the revenue of the city in payment of his judgment, less the expenses of collection, and the city officials have no right by the creation of new debts, to deprive the judgment creditor of the benefit of his judgment and execution.

Wherefore the plaintiffs prays judgment, that a peremptory writ issue for costs, &c.

GRANT, *For P'f.*

Filed May 16, 1868.

W. G. WOODWARD, *Clerk.*

55 And afterwards, on the 30th day of May, 1868, it being still of the said May term of the said Circuit Court, the following final judgment and entry of record were made, that is to say:

THE UNITED STATES EX REL., THOMAS Butts
vs.
THE MAYOR AND ALDERMEN OF THE city of Muscatine.

And now comes, as well the relator by Grant and Smith, his attorneys, as the respondents, by Thomas Hanna, their attorney. And this cause coming on for hearing on the demurrer of the relator to the return made by the respondents to the alternative writ heretofore issued in this cause, the same was argued by counsel, on consideration whereof the court find that the several matters and things set forth in said retern are sufficient in law to bar the right of the relator to the writ of peremptory mandamus as prayed for.

56 It is therefore considered that the said demurrer be overruled. And the plaintiff electing to abide by his demurrer, the (alternative) writ is dismissed.

And it is ordered that the respondents recover of the relator their costs and charges in this behalf expended, taxed at $, to which (judgment) the relator excepts, and prays a writ of error, which is allowed upon his giving bond in the sum of five hundred dollars, as required by law.

57 And afterward, on the 19th day of June, 1868, the relator filed an appeal bond of the tenor following, to wit:

Circuit Court of the U. S. for the district of Iowa.

Know all men by these presents, that we, Thomas Butz as principal, and Charles Whitaker as surety, are held and firmly bound to the mayor and aldermen of the city of Muscatine, Iowa, in the penal sum of five hundred dollars, to which payment we bind ourselves and each of us.

Given under our hands this 1st day of June, A. D. 1868.

The condition of this obligation is this, that if said obligors shall duly prosecute to effect a writ of error from the Supreme Court of the United States to the Circuit Court of the same, to the district of Iowa, in a cause wherein said obligor, Thomas Butz is plaintiff in error, and said obligor defendant in error, and pay all damages and costs if they fail to make their plea good, this obligation
58 to be void; otherwise to remain in full force and effect.

(Signed) THOMAS BUTZ,
By GRANT & SMITH,
His Att'ys.

We know this bond to be good for the amount named.'
(Signed) GRANT & SMITH, *Att'ys.*

Approved by— SAM. F. MILLER.

Filed June 19th, 1868.
(Signed) W. G. WOODWARD, *Clerk.*

59 Circuit Court of the United States, District of Iowa.

I, W. G. Woodward, clerk of the Circuit Court of the United States in the district of Iowa, do hereby certify that the foregoing forty-nine pages of writing constitute and are a full, true and complete transcript of the record and proceedings and of the bond in the cause above entitled, as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of the said Circuit Court at Des Moines, this 22d day of July, A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

Clerk's fees.

Transcript	$10 05
Certif. and seal	35
	$10 40

60 Supreme Court of the United States.—December term, 1868.

THE UNITED STATES ON THE RELATION OF Thomas Butz, plaintiff in error,
v.
THE MAYOR AND ALDERMEN OF THE CITY of Muscatine, defendants in error.
} In error to the District of Iowa.

Now comes the plaintiff and says that in the records and proceedings of the court below there was error as follows:

1st. The court below erred in overruling the plaintiff's demurrer to the defendants' return to the alternative writ.

2. The court erred in dismissing the said writ.

Wherefore he prays that said judgment may be reversed.

GRANT,
For the Pl'ff in Error.